

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MATTHEW C. MOORE,

Plaintiff,

vs.

CV F 05 0304 AWI WMW P

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

KINGS COUNTY SHERIFF'S DEPT., et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

This action proceeds on the complaint. Plaintiff, formerly incarcerated at the Kings County Jail, brings this action against jail officials employed at the Kings County Jail.

Plaintiff's sole claim in this complaint is that a friend of his arrived at the jail "to pick up \$250 to buy wedding ring for my now present wife." Plaintiff alleges that his friend had proper identification, and authorization to retrieve the money. Defendant Heather allegedly told plaintiff that "she doesn't condone drug transactions." Plaintiff's friend "felt belittled and left in tears."

To warrant relief under the Civil Rights Act, a plaintiff must allege and show that defendant's acts or omissions caused the deprivation of his constitutionally protected rights.

1 Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1993). In order to state a claim under § 1983, a
2 plaintiff must allege that: (1) a person was acting under color of state law at the time the
3 complained of act was committed; and (2) that person's conduct deprived plaintiff of rights,
4 privileges or immunities secured by the Constitution or laws of the United States. Paratt
5 v. Taylor, 451 U.S. 527, 535 (1981).

6 The only conduct charged to any individual by plaintiff is verbal. Mere verbal
7 harassment or abuse is not sufficient to state a constitutional deprivation under 42 U.S.C. § 1983.
8 Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987). Plaintiff has not, therefore,
9 alleged any facts that state a claim for relief under section 1983. The complaint must therefore
10 be dismissed. The court will, however, grant leave to file an amended complaint.

11 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
12 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
13 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
14 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless
15 there is some affirmative link or connection between a defendant's actions and the claimed
16 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
17 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

18 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
19 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an
20 amended complaint be complete in itself without reference to any prior pleading. This is
21 because, as a general rule, an amended complaint supersedes the original complaint. See Loux
22 v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
23 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
24 original complaint, each claim and the involvement of each defendant must be sufficiently
25 alleged.
26

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff's complaint is dismissed; and

3 2. Plaintiff is granted thirty days from the date of service of this order to file a
4 first amended complaint that complies with the requirements of the Civil Rights Act, the Federal
5 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
6 docket number assigned this case and must be labeled "First Amended Complaint"; plaintiff
7 must file an original and two copies of the amended complaint; failure to file an amended
8 complaint in accordance with this order will result in a recommendation that this action be
9 dismissed.

10
11 IT IS SO ORDERED.

12 **Dated: August 18, 2005**
13 mmkd34

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE